under section 76 of this Ordinance within one month after the service of such notice:"

In my view, the levying of tax must be distinguished from the assessment of income. They are two entirely different processes. The tax in the case of a limited company, has to be levied at the rate laid down in section 43 of the Ordinance. The assessment of the company's income has to be made in accordance with the provisions of sections 35, 37 and 38 of the Ordinance. And section 86 states quite clearly that tax must be paid notwithstanding any objection or appeal against the assessment on which such tax is levied. It follows therefore that the expression "tax levied in accordance with the provisions of section 42 or 43" means tax levied at the rates laid down in either of those two sections. In the present case the defendant's complaint is not in respect of the rate at which the tax has been levied; it is against the assessment of his income.

In my opinion, once the Comptroller of Income Tax has made an assessment and issued a notice of assesment to a tax payer calling upon him to pay the tax mentioned in the notice, the tax payer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment. Whether the assessment is right or wrong, the tax must be paid notwithstanding any objection or appeal. The scheme of the Income Tax Ordinance is that if any person disputes the assessment, he may apply to the comptroller to review and revise the assessment made upon him. If the comptroller refuses to amend the assessment, the aggrieved tax payer may appeal to the Board of Review appointed under section 78 of the Ordinance and the board may, after hearing the appeal, confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit. The tax payer or the comptroller may then appeal to the High Court from the decision of the board upon any question of law or mixed law and fact. A tax payer has no right to by-pass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a tax payer to recover tax due under a notice of assessment, the tax payer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done every unwilling tax payer will refuse to pay tax and when sued in court, will challenge the merits of the assessment, thus causing considerable delay in the collection of the tax. The proper course for every aggrieved tax payer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review.

In my opinion, the learned registrar came to a correct decision in law. The appeal is accordingly dismissed and the order made by the registrar is affirmed. The defendant is ordered to pay to the plaintiff the costs of the proceedings before the registrar and the costs of this appeal as taxed.

Appeal dismissed.

Solicitors: *Chung & Co.*

MOHAMED BIN MYDDIN v. TEO MEK YOK

[F.C. (Barakbah L.P., Abdul Aziz and Wan Suleiman JJ.) June 22, 1966]

[Kota Bharu — F.C. Civil Appeal No. 14 of 1966]

Landlord and Tenant — Controlled premises — Renovation or re-erection — Burden of proof — Evidence Ordinance, 1950, s. 103 — Control of Rent Ordinance, 1956.

The plaintiff (respondent herein) claimed possession of a shop-house let to the defendant (appellant). The shop-house was originally erected prior to 1948 but there was either a renovation or a re-erection of the premises in 1953. The plaintiff claimed that the premises were rebuilt in 1953 and was not protected by the Control of Rent Ordinance. The defendant claimed that the premises were merely renovated in 1953 and that the premises were erected prior to 1948 and that it was protected by the Ordinance. The learned president held that the burden of proof that the premises were not controlled premises was on the plaintiff. After hearing the parties he came to the conclusion that the premises were rebuilt in 1953 and that the premises were not protected. The defendant appealed to the High Court and then to the Federal Court.

Held: the learned president was wrong in holding that the burden of proving that the premises were not controlled premises was on the plaintiff. It was the defendant who alleged that the premises were protected and the burden of proof was on him, and the learned president should have called upon him to begin.

Case referred to:—

(1) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

FEDERAL COURT.

S. P. Seenivasagam for the appellant.

W. L. Wrigglesworth for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal arising out of the decision of the president, sessions court, Kota Bharu given on the 6th of July 1965 giving judgment for the plaintiff for vacant possession of a shophouse at Tanah Merah and for the payment of double rent and costs. It is common ground that the appellant became the tenant of the respondent upon the purchase of the land on which stood a shop tenanted by the appellant in 1950. There is no dispute that the old shop was erected prior to 1948 and that in

1953 either a renovation or re-erection was effected to the building. On the 22nd February 1965 the landlord served on the tenant a notice terminating the tenancy and seeking vacant possession of the premises.

The defendant's claim was that in 1953 the premises were merely renovated and that the tenancy continued without a break after that. Since the old premises were erected prior to 1948 and consequently protected by the Control of Rent Ordinance, 1956 the new premises continued to enjoy the same protection. After hearing the evidence the learned president came to the conclusion that the building in question was actually re-built in 1953 and had, therefore, lost the protection of the Ordinance. He also came to the conclusion that the tenancy of the old premises had been terminated upon the demolition of the old house.

Against that decision the appellant appealed to the High Court at Kota Bharu and after hearing the argument the late Mr. Justice Hashim dismissed the appeal but due to the untimely death of the late judge he had not given any reasons for doing so. It now falls upon us sitting in the Federal Court to deal with this case by way of re-hearing.

Several grounds of appeal have been urged on behalf of the appellant, of which I consider that it is necessary to deal with only one, and that relates to the question of onus of proof. It is manifest from the pleadings and the record that the learned president was wrongly of the opinion that the burden of proving that the premises were not controlled premises was on the plaintiff. The notes of evidence show that he had called upon the plaintiff to begin. In the case of *Annamalai Chettiar* v. *Yeoh Kee Tin*,[1] Buhagiar J., delivering the judgment of the Court of Appeal, stated that the provisions of the Control of Rent Ordinance did not alter the rule as regards the burden of proof generally. At page 10 he stated:—

> "There is nothing in that section (section 12) affecting the general principles of evidence regarding the burden of proof as laid down particularly in section 103 of the Evidence Ordinance, 1950; under that section the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of fact is to lie on any particular person."

In this case the tenant (appellant) alleged that the premises were protected for a number of reasons. The burden is, therefore, on him to prove those facts. It is unfortunate that this decision of the Malayan Court of Appeal was not brought to the attention of the president, sessions court. Had it been done I would have no hesitation in saying that the learned president would have called upon the defendant to begin and the confusion arising from the common misapprehension as to the onus of proof would not have arisen in this case.

I would, therefore, allow the appeal and order that the case be remitted to the sessions court for a re-trial. Costs to follow the event.

Barakbah L.P. and **Wan Suleiman J.** concurred.

Appeal allowed.

Solicitors: *S. Seenivasagam & Sons; Wrigglesworth & Co.*

PUBLIC PROSECUTOR v. TAN SIEW LAN

[A.Cr.J. (Raja Azlan Shah J.) June 22, 1966]

[K.L. — Criminal Appeal No. 28 of 1966]

Customs and Excise — Intoxicating liquor — Sufficiency of chemist's certificate — Excise Act, 1961, s. 2.

The accused had been charged with possession of intoxicating liquor. The learned magistrate acquitted her on the ground that the chemist's certificate which was admitted in evidence did not comply with the requirements of the definition of "intoxicating liquor" under section 2 of the Excise Act. The chemist had stated *inter alia* "I analysed the contents of the above-mentioned exhibits and found them to be 'intoxicating liquor' as defined in section 2 of the Excise Act, 1961." The public prosecutor appealed against the acquittal.

Held: although it is highly desirable that the chemist in his report should follow the wording of the section, failure to do so is not fatal to the prosecution case; so long as there is sufficient indication that the chemist had directed his mind to the requirements of the section, omission to state anything like detail will not be fatal.

Cases referred to:—

(1) *Deputy Public Prosecutor* v. *Tan Ah Guat* [1947] M.L.J. 32.

(2) *Toh Kim Soo* v. *R.* [1954] M.L.J. 325.

CRIMINAL APPEAL.

Nik Saghir bin Mohamed Noor (Deputy Public Prosecutor) for the Public Prosecutor.

Kirpal Singh Brar for the respondent.

Raja Azlan Shah J. (delivering oral judgment): This appeal revolves on the issue whether the chemist's certificate is conclusive evidence that the substance as examined by the chemist is intoxicating liquor as defined in section 2 of the Excise Act, 1961. The accused was charged with possession of intoxicating liquor, to wit, 5 jars and 2 bottles containing 24½ gallons, under the provisions of section 73(1)(a) and punishable under section 73(1) of the said Act. She claimed trial and at the end of the prosecution case the learned magistrate acquitted the accused, basing his decision on the ground that the chemist's certificate which was admitted did not comply with the requirements of the definition of intoxicating liquor under section 2 of the Act.